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C.C. POCKET NO. T05-0037

Exhibit No. 1

LOCATION OF SECTION INDICATED THUS: -  -

Witness

Date 12/5/05 Reporter [Signature]

Case No.
T05-0037



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I.C.C. DOCKET NO. T05-0037
Exhibit No. 4

INTERGOVERNMENTAL AGREEMENT

for the Funding, Construction, Maintenance and Governance of
a Bicycle/Pedestrian Overpass Over
Union Pacific Railroad Company Property,
and Connecting Bicycle/Pedestrian Trail

Witness
Date 10/5/95 Reporter SL

This AGREEMENT is made and entered into by and among The Board of Education of Community Unit School District 200 (the "School") with offices at 130 West Park Avenue, Wheaton, Illinois 60187; and the Wheaton Park District (the "Park") with offices at 666 South Main Street, Wheaton, Illinois 60187. The School and Park are hereinafter sometimes individually referred to as a "Party" or an "Original Party" and jointly referred to as the "Parties" or the "Original Parties". The date of this Agreement shall be the last date on which both of the Original Parties shall have signed this Agreement as indicated on the signature page of this Agreement.

Additional entities with legal authority to enter into this Agreement may be added to and included as Parties to this Agreement from time to time hereafter upon the unanimous consent of the Original Parties. The addition/inclusion of each such entity shall be reflected in a written addendum, executed by the Original Parties and such additional Party, and the rights and obligations of the Parties as set forth in this Agreement, and all amendments to this Agreement, shall be applicable to such additional Party from and after the effective date of such addendum, unless and except as otherwise specified in such addendum.

In consideration of their mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PURPOSE/PROJECT DEFINED

1.1 Each Party has determined that a public need exists for, and that it is in its and the public's best interest to participate in the financing, construction, maintenance and governance of, a bicycle/pedestrian/hiking bridge structure, including access ramps/stairs and above grade paths (collectively, the "Overpass Structure"), together with a path and adjacent retaining wall to Manchester Road, a path to Nepil Ave. and Cottonwood Ave., and fencing north of the right of way of the Union Pacific Railroad Company, successor in interest to the Chicago and Northwestern Railroad Company ("Railroad") as required by the Railroad. The Overpass Structure together with such paths, wall and fencing are hereinafter sometimes collectively referred to as the "Project." For purposes of this Agreement, the fencing north of the Railroad right of way shall be included in the term "Project" only for purposes of initial construction of the Project, but not concerning the obligation to repair or maintain, or liability for failure to repair or maintain, the Project.

1.2 The Project will link properties lying north of the Railroad right of way, currently including a substantial residential area, a portion of the Illinois Prairie Path and the Lincoln Marsh



Natural Area/Winfield Creek Greenway, with properties lying south of the Railroad right of way, currently including the DuPage County Fairgrounds, Monroe Middle School, Graf Park, DuPage County Government Center, a senior housing development, Jefferson Elementary School and a retail/office research center. Linkage will be achieved by the construction, maintenance and operation of the Overpass Structure over the Railroad right of way at a point adjacent to the DuPage County Fairgrounds and Monroe Middle School to the south, and the Lincoln Marsh/Winfield Creek Greenway on the north, via the Cooley Ave. right of way, and a system of connecting bicycle/pedestrian trails through the Lincoln Marsh/Winfield Creek Greenway to the Illinois Prairie Path on the north side of the Railroad right of way, and across Monroe Middle School to Manchester Road on the south side of the Railroad right of way. The Project will be constructed primarily on certain real property currently owned by the Park (the "Park Overpass Property") and on certain real property currently owned by the School (the "School Overpass Property"). The use of the Park Overpass Property and the School Overpass Property for the Project constitutes a recreational or conservation purpose under the provisions of the Recreational Use of Land and Water Areas Act of the State of Illinois, 745 ILCS 65/1 et seq. and a recreational purpose under the Local Government Tort Immunity Act of the State of Illinois, 745 ILCS 10/3-106. No person shall be charged any fee for use of any portion of the Project. An easement from the City of Wheaton for temporary access to the construction area and for construction activities will be required, the agreement for which shall be substantially in the form of **Exhibit E-5** attached hereto and made a part hereof (the "Temporary Construction Easement Agreement"). Access to the Overpass Structure from Manchester Road will be obtained by the conveyance by the School to the Park of certain property owned by School (the "Manchester Access Property"), for a consideration of \$1.00, after completion of construction of the Project, and access to the Overpass Structure from the Cooley Avenue right of way will be obtained by the Park granting to the School a certain easement over and across certain property owned by the Park (the "Cooley Access Easement Property"). The School will also grant to Park a certain license agreement for access to portions of the Project area and to store construction equipment and materials (the "Temporary Construction Access and Equipment and Materials Storage License"). A more detailed description of the Project is attached to and incorporated by reference in this Agreement as **Exhibit A**. A Project Map is attached to and incorporated by reference in this Agreement as **Exhibit B-1** and a Project Site Plan is attached to and incorporated by reference in this Agreement as **Exhibit B-2**. The legal description of the Park Overpass Property is attached to and incorporated in this Agreement as **Exhibit C-1**. The legal description of the School Overpass Property is attached to and incorporated in this Agreement as **Exhibit C-2**.

1.3 In addition to the Parties, other public and private entities have determined, and additional entities may determine, that it is in their and the public's best interest to participate in the financing of the construction or operation of the Project. These entities are or will be non-party

contributors and, as such, have not exercised or assumed and will not exercise or assume any jurisdiction, direction or responsibility for the Project, its design, construction or operation or any other aspect thereof. These entities are hereinafter sometimes referred to individually as a "Non-Party Contributor" and collectively as the "Non-Party Contributors."

2. AUTHORITY

2.1 Article VII, Section 10, of the Constitution of the State of Illinois of 1970 and the Intergovernmental Cooperation Act [5 ILCS 220/1 et. seq.] provide, among other things, that units of local government and school districts (a) may contract or otherwise associate among themselves and with the State or any agency thereof to obtain or share services and to exercise, combine or transfer any power or function, in any manner not prohibited by law or by ordinance; (b) may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance; (c) may appropriate funds and authorize the receipt of grants for, and use their credit, revenues and other resources to pay costs and to service debt related to, such intergovernmental activities.

2.2 The Project is located entirely or partially within the corporate boundaries of DuPage County, Milton Township, City of Wheaton, Community Unit School District 200 and Wheaton Park District.

2.3 Each Party is a unit of local government or school district and is authorized by the Constitution of the State of Illinois, the Intergovernmental Cooperation Act, and its enabling statute to enter into this Agreement and to carry out or cause to be carried out the intergovernmental activities contemplated herein.

2.4 Article VII, Section 10 of the Constitution of the State of Illinois of 1970 provides that the State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.

2.5 The Federal Government and the State of Illinois have recognized the public benefits to be derived by, and have established as a goal the use of, alternative methods of transportation, including bicycle and pedestrian routes.

2.6 The State of Illinois has received federal funds authorized by the Intermodal Surface Transportation Efficiency Act of 1991 for transportation enhancement activities, including provision of facilities for pedestrians and bicycles, which it makes available to local government sponsors under the Illinois Transportation Enhancement Program ("ITEP"). The Illinois Department of Transportation ("IDOT") is the State agency responsible for the management of ITEP and funding of ITEP Projects.

3. PRELIMINARY ACTIONS

3.1 On behalf of the Original Parties, acting as the lead local government sponsor, the Park applied for Project reimbursement funding under ITEP, and IDOT has informed the Park that reimbursement funding for the Project has been approved in an amount not to exceed \$1,881,000.00, notwithstanding that in July, 2004, based on the plans and specifications approved by IDOT, the estimated cost of construction (not including construction supervision) was \$2,540,300.00. Park has obtained additional grant funding for the Project from other State of Illinois agencies.

3.2 Construction of the Project involves three phases. "Phase I" concerned type, size and location preliminary engineering work on the Project, and has been completed. "Phase II" involved the design and construction contract document on the Project, and has been completed. "Phase III" will involve the bidding for the construction, construction supervision of the Project, and the actual construction of the Project.

3.3 The Original Parties entered into a letter agreement dated as of September 12, 1995 (the "Phase I Cost Sharing Agreement"), a copy of which is attached as **Schedule 1** and incorporated by reference in this Agreement, with the following original Non-Party Contributors: DuPage County, the DuPage County Fair Association, the City of Wheaton, Milton Township and Metra, as predecessor to the Railroad, providing for the sharing of the local agency share of the Phase I type, size and location preliminary engineering services for the Project. DuPage County, the DuPage County Fair Association, the City of Wheaton, Milton Township and the Railroad as successor to Metra are hereinafter sometimes individually referred to as an "Original Non-Party Contributor" or collectively referred to as the "Original Non-Party Contributors." The Phase I Cost Sharing Agreement also indicated that the Original Parties' and the Original Non-Party Contributors' estimated total contributions to the Project would be \$170,500.00, which included the Phase I contributions, and the percentage share of said amount estimated to be contributed by each Original Party and Original Non-Party Contributor. At the time the Phase I Cost Sharing Agreement was entered into, the estimated total cost of the Project was \$871,000.00.

3.4 On behalf of the parties to the Phase I Cost Sharing Agreement, the Park entered into a "Local Agency Agreement for Federal Participation" for Phase I type, size and location preliminary engineering services (the "Phase I Local Agency Agreement") dated as of November 3, 1995.

3.5 On behalf of the parties to the Phase I Cost Sharing Agreement, the Park entered into a required IDOT form of "Preliminary Engineering Services Agreement" with CEMCON, Ltd. dated as of October 18, 1995 and a subsequent "Standard Form of Agreement Between Owner and Engineer for Preliminary Phase I Professional Engineering Services" with CEMCON, Ltd., dated as of June 19, 1996. The Park has entered into an agreement with CEMCON, Ltd. concerning the final design of the Project and contract documentation therefor, as part of Phase III (all of these agreement with CEMCON, Ltd. are hereinafter collectively referred to as the "CEMCON Agreements").

4. ALLOCATION OF COSTS

4.1 Each Original Party and Original Non-Party Contributor has made the payments set forth in **Schedule 2** attached to and incorporated by reference in this Agreement, identified as Phase I Share(s) and Phase II Share(s) in said Schedule 2. In addition, each Original Party and certain Original Non-Party Contributors have agreed to pay the amounts set forth in **Schedule 3** attached and incorporated by reference in this Agreement ("Phase III Share(s)").

4.2 All of the following shall be conditions precedent to the commencement of construction of the Project and to the existence of the Original Parties' Shortfall Funding Contribution Option, as hereinafter defined:

4.2.1 A satisfactory agreement has been entered into among the Original Parties and the Railroad regarding an air rights license for a portion of the Overpass Structure, a temporary license from the Railroad to construct the Overpass Structure utilizing and over the Railroad right of way, a permanent license for placement and repair of fencing north of the Railroad right of way, and indemnifying the Railroad for costs incurred by the Railroad caused by activities on the Project, and containing such insurance and indemnification provisions as may be acceptable to the Original Parties (the "Railroad Agreement").

4.2.2 Any necessary local, state and county permits, agreements, court or administrative orders or easements required for the construction of the Project, as determined by the Park, shall have been obtained and entered into, including but not limited to the following:

- a) an order from the Illinois Commerce Commission (the "ICC") permitting the crossing of the Railroad right of way by the Overpass Structure ;
- b) any governmental permits required for construction; and
- c) the Temporary Construction Easement Agreement with the City of Wheaton.

4.3 If, after the completion of the bidding portion of Phase III of the Project, the total cost of the actual construction of the Project, not including construction supervision, exceeds \$2,540,300.00, then either of the Original Parties, may, on notice to the other Original Party and all Non-Party Contributors, elect to terminate this Agreement, as of a date not less than ten (10) days after the date specified in such notice, and any funds held by the Park, as described in Paragraph 5.3 of this Agreement, shall be distributed pursuant to Paragraph 9.4 of this Agreement.

4.4 If this Agreement is not terminated pursuant to Paragraph 4.3 of this Agreement, and all of the conditions precedent to commencement of construction described in Paragraph 4.2 of this Agreement have occurred, the "Original Parties' Shortfall Funding Contribution Option" shall arise. The "Original Parties' Shortfall Funding Contribution Option " means an option of each of the Original Parties, by a deadline mutually determined by the School and the Park, to make, or cause the Original Non-Party Contributors or other Non-Party Contributors to make, contributions of funds which, when

added to funds paid or to be paid from or through IDOT, ICC and the Illinois Department of Natural Resources, are adequate to pay for the cost of construction and construction supervision of the Project (the "Required Local Agency Total") , provided, however, that the maximum required total contribution of each Original Party, as opposed to additional contributions which may be made pursuant to the Original Parties' Shortfall Funding Contribution Option, including all hard and soft costs, shall not exceed \$191,806.75, as calculated on **Schedule 4** attached to and incorporated by reference into this Agreement. The estimated current cost of the Project and the estimated funding from all sources is described on **Schedule 5** attached to and incorporated by reference into this Agreement. As part of the Original Parties' Shortfall Funding Contribution Option, the Original Parties shall discuss with each other the equal contributions which may be made by the Park and the School and the reasonable efforts to be made by the Park and the School to seek funding from Non-Party Contributors. If the Required Local Agency Total is not contributed by the deadline, and neither Original Party agrees, in a writing delivered to the other Original Party, to contribute funds to achieve the Required Local Agency Total, either of the Original Parties may, on notice to the other Original Party and all Non-Party Contributors, elect to terminate this Agreement, as of a date not less than ten (10) days after the date specified in such notice, and any funds held by the Park pursuant to Paragraph 5.3 of this Agreement shall be distributed pursuant to Paragraph 9.4 of this Agreement.

4.5 Notwithstanding the above stated maximum required contribution amount, a) the Parties reserve all rights each of them may have with respect to sharing the cost of legal fees incurred in connection with the preparation and implementation of this Agreement, a former agreement drafted with respect to several easements to be obtained from DuPage County, the City of Wheaton and DuPage County Fair Association, which agreement was not finally needed, the Railroad Agreement, the CEMCON Agreements, and all agreements and orders described in Paragraph 4.2 above, and b) during construction of the Project, and upon approval by both Original Parties, the Original Parties shall share equally in the cost of any additional consulting and professional fees required for the Project, including but not limited to engineering and legal fees incurred in connection with any revisions to this Agreement.

4.6 Following construction of the Project, the Original Parties shall share equally in the ownership, and in the cost, if first approved by the Parties, of maintenance, repair, reconstruction or replacement of the Project, including the Overpass Structure (collectively, the "Shared Costs"). As used in this paragraph 4.6, unless otherwise agreed between the Parties, "maintenance" means minor repair or rebuilding of any portion of the Project by either of the Parties, and does not include the cost of routine safety inspections of any portion of the Project by either of the Parties, or custodial surface maintenance of any portion of the Project, such as sweeping , by either of the Parties.

4.7 Each Party shall appropriate such funds as shall be necessary to carry out its obligations under this Agreement.

5. PROJECT ADMINISTRATION

5.1 The Park is hereby designated as and shall be the initial "Administrative Party" for the Parties under this Agreement. The Administrative Party shall have the authority and be responsible for (i) acting as the lead local agency for the benefit and on behalf of the Parties in procuring Federal and/or State funding for the Project and executing applications and agreements in connection therewith as shall be authorized by the Parties; (ii) coordinating and administering funding for the Project by the Parties and Non-Party Contributors; (iii) contracting for necessary or desirable professional services including but not limited to engineering and legal services; (iv) negotiating for and obtaining temporary construction and permanent access easements, licenses and permits, as may be necessary or desirable for the construction, maintenance, repair and reconstruction and replacement of the Project; (v) soliciting bids and awarding and administering contracts for the reconstruction and replacement of the Project, but not those for routine repair or maintenance (the Parties acknowledge that IDOT shall be responsible for the solicitation of bids for the initial construction of the Project, with the approval of the Parties) ; (vi) taking such other actions as it reasonably shall deem necessary or desirable to carry out the intent and effectuate the purposes of this Agreement and the Project. The Administrative Party may resign as such upon at least thirty (30) days advance written notice to the other Parties. The Administrative Party may also be changed from time to time by majority vote of the Parties. Only a Party may be the Administrative Party. There are no restrictions on the number of years, consecutive or otherwise, that a Party may serve as the Administrative Party.

5.2 An advisory entity to recommend the appropriate maintenance, repair, and eventual replacement or reconstruction of the Project is hereby created and designated the "Overpass Advisory Board" ("Advisory Board"). The Advisory Board shall not have any power as such to act or contract on behalf of the Parties; its sole function is to act in an advisory capacity, providing recommendations to the Parties in accordance with the terms and provisions of this Agreement.

5.2.1 Membership in the Advisory Board shall consist of one designated representative from each of the Parties and one designated representative from such Non-Party Contributors as shall be approved for membership on the Advisory Board by the Parties.

5.2.2 Until the Advisory Board is comprised of more than two members, unanimous vote of the members shall constitute the action of the Board. At such time as the Advisory Board is comprised of more than two members, the majority vote of the members shall constitute the action of the Board; provided, however, that if the Advisory Board has among its members entities other than the Parties, the Parties shall have sixty percent (60%), divided equally among them, of the votes entitled to be cast on any matter to come before the Board and the Non-Party Contributor

members shall have forty percent (40%), divided equally among them, of the votes entitled to be cast.

5.2.3 Whenever the Parties deem it necessary or advisable (on a date or dates to be determined by the Original Parties), the Advisory Board, in consultation with IDOT and a professional Illinois licensed engineer mutually acceptable to the Parties, shall submit written recommendations to the Parties for appropriate maintenance, repair, reconstruction or replacement of the Project.

5.2.4 The Administrative Party shall call at least one meeting of the Advisory Board annually for the purpose of establishing and considering the recommendations provided for in subparagraph 5.2.3 and such other matters as the Administrative Party shall deem appropriate. Meetings may also be called by not less than two (2) other Advisory Board members. Notice of meetings of the Advisory Board shall be in writing (personal delivery, facsimile transmission or US mail) given not less than five (5) nor more than thirty (30) days prior to the date of the meeting; provided, however, that notice of a meeting held for the purpose of discussing a bona fide emergency may be given upon twenty-four (24) hours notice. The agenda for the meeting shall accompany every notice. Notwithstanding the foregoing, attendance of an Advisory Board member at any meeting shall constitute a waiver of notice of such meeting, except where a member attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The meetings of the Advisory Board shall be subject to the requirements of the Open Meetings Act of the State of Illinois.

5.3 The Administrative Party shall act as an escrowee for the Parties with respect to receiving deposits for the design and construction of the Project and any later reconstruction, replacement or repair of any portion of the Project, subject to fund accounting by the Park District. A representative of the Park, specifically Kenneth Kutska, and a representative of the School, specifically Dr. Gary Catalani, shall agree in advance to the final design of the Project and approval of contracts and change orders, and otherwise subject to applicable law; provided, however, that approvals shall not be unreasonably withheld or delayed, and that no changes to the design or construction may be required by either Party which might adversely effect the structural integrity of the Project or funding for the Project. The monies deposited by each Party and each Non-Party Contributor shall be drawn upon according to submittal of payout requests by the contractor(s) responsible for the initial construction of the Project. Each payout request shall be sent by the Administrative Party to the other Parties, accompanied by appropriate contractor's, subcontractor's and material supplier's sworn statements and mechanic's lien waivers. Upon

review and approval of each payout request by the Parties, which review and approval shall not be unreasonably withheld or delayed, the Administrative Party shall then direct IDOT to pay the appropriate payee. The Parties acknowledge that a) IDOT will actually pay the appropriate payee, b) twenty percent (20%) of each payout shall be billed by IDOT to the Administrative Party and eighty percent (80%) shall be paid by Federal Highway Administration funds ("FHWA Funds") until FHWA Funds are exhausted, and c) after FHWA Funds are exhausted, IDOT will bill the Administrative Party for one hundred percent (100%) of all payout requests. If any Party's unreasonable withholding or delay of a payout request results in the imposition of any interest or other charges from the payee to whom the payout funds are owed, the withholding or delaying Party shall be responsible for those charges. It is contemplated that Park will facilitate payment for all Project costs otherwise reimbursable from grant funding, will seek funding from the granting agencies for those payments, and that School shall not be liable to Park if any grant funding is not finally paid out from the applicable granting agency(ies). Except as provided in Paragraph 9.4, below, interest earned on funds deposited in the fund account maintained by the Park shall remain in the fund account and shall be used only for the purpose of the design and construction of the Project and the maintenance, repair, reconstruction or replacement of the Project, and if the Parties agree in writing, for payment of actual, reasonable and necessary out of pocket costs and expenses incurred by the Administrative Party.

5.4 If approved in advance by the Parties, any maintenance or repair of the Project may be performed by any of the Parties with its own personnel or through a subcontractor, and in such event the Party performing such maintenance or repair shall be reimbursed for the actual costs of such maintenance or repair incurred by such Party. Payment to the Party performing such repair shall be made by the Administrative Party out of the fund account established pursuant to Paragraph 5.3, above, following the same procedure outlined in that paragraph, except that if the repairs are performed by the Party's own personnel, a reasonably detailed invoice shall be submitted in lieu of the contractor's sworn statement and supporting lien waivers.

6. RIGHTS AND RESPONSIBILITIES

6.1. The Park shall contribute funds in accordance with Paragraph 4, above and for the short and long term maintenance of the Project, shall contribute the use of Park-owned lands for the site of the Project, and:

- 6.1.1 The Park, in cooperation and consultation with the other Parties, reserves the right to review and approve all Project design, and all engineering, construction, maintenance, and restoration contracts for the Project .
- 6.1.2 The Park shall be responsible for continued maintenance of the portion of the Project on property owned by the Park, and of the fencing located on Railroad

property north of the Railroad right of way, but the costs, if first approved by the Parties, of such maintenance shall be Shared Costs.

- 6.1.3 The Park shall not place or permit to be placed any permanent barriers on or across Project paths or the Overpass Structure precluding the use thereof by pedestrians, hikers or bicyclists. Temporary barriers may be placed in connection with maintenance, repair or reconstruction or in the event of a bona fide safety emergency.
- 6.1.4 The Park shall execute a reciprocal easement agreement with the School substantially in the form of the reciprocal easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-1**, granting to School, its successors, successors-in-title and its and their employees, agents and invitees, a non-exclusive easement across the Park Overpass Property and fifteen (15) feet of adjacent land on either side thereof, as may be applicable, appurtenant to the School Overpass Property, for passage and use for the purpose of ingress and egress to and from the School Overpass Property and for the purpose of construction, maintenance, repair and reconstruction of the Project in accordance with the provisions of this Agreement. In addition, after completion of construction of the Project, the Park shall accept a quit claim deed from the School, substantially in the form of the deed attached hereto and incorporated by reference in this Agreement as **Exhibit D-2**, conveying the Manchester Access Property from the School to the Park, and the Park shall pay one half of the cost charged by CEMCON, Ltd. to create a legal description of the Manchester Access Property and a survey thereof. Further, the Park shall execute an access easement agreement with the School, substantially in the form of the access easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-3**, whereby the School, its successors-in-title and its employees, agents and invitees are granted a non-exclusive access easement, across the Cooley Access Easement Property, appurtenant to the School Overpass Property, for the purpose of access to the Overpass Structure from the Cooley Ave right of way. The Park shall also execute the form of Temporary Construction Access and Equipment and Materials Storage License in the form of **Exhibit D-4** attached to and incorporated by reference in this Agreement, for the purposes of obtaining a license to use a portion of the School's property for construction of the Project. None of the easements described in this Paragraph 6.1.4 shall impinge on or affect the School's parking lot behind Monroe Middle School or

the School's driveway in front of Monroe Middle School; provided that the Temporary Construction Access and Equipment and Materials Storage License shall temporarily affect such driveway, as therein described.

6.1.5 The Park shall provide the Project engineer and other Project consultants with such access to Park owned properties as may be necessary to perform Project engineering and design work and shall promptly upon request provide the Project engineer and other Project consultants with such surveys, reports, studies or other information in Park's possession or under its control as may be relevant to the Project.

6.1.6 The Park shall carry out its other obligations as provided in this Agreement, including acting as the initial Administrative Party.

6.2 The School shall contribute funds in accordance with Paragraph 4, above, and for the short and long term maintenance of the Project and shall contribute the use of School-owned lands for the site of the Project, and :

6.2.1 The School, in cooperation and consultation with the other Parties, reserves the right to review and approve all Project design, and all engineering, construction, maintenance and restoration contracts for the Project.

6.2.2 The School shall be responsible for continued maintenance of the portion of the Project on property owned by the School, but the costs, if first approved by the Parties, of such maintenance shall be Shared Costs.

6.2.3 The School shall not place or permit to be placed any permanent barriers on or across Project paths or the Overpass Structure precluding the use thereof by pedestrians, hikers or bicyclists. Temporary barriers may be placed in connection with maintenance, repair or reconstruction or in the event of a bona fide safety emergency.

6.2.4 The School shall execute a reciprocal easement agreement with the Park , substantially in the form of the reciprocal easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-1**, granting to Park, its successors, successors-in-title and its employees, agents and invitees, a non-exclusive easement, across the School Overpass Property and fifteen (15) feet to the east thereof, appurtenant to the Park Overpass Property, for passage and use for the purpose of ingress and egress to and from the Park Overpass Property and for the purpose of construction, maintenance, repair and reconstruction of the Project in accordance with the provisions of this Agreement. In addition, after completion of construction of the Project, the School shall execute a quit claim

deed to the Park, substantially in the form of the deed attached to and incorporated by reference in this Agreement as **Exhibit D-2**, conveying the Manchester Access Property to the Park, and the School shall pay one half of the cost charged by CEMCON, Ltd. to create a legal description of the Manchester Access Property and a survey thereof. Further, the School shall execute an access easement agreement with the Park, substantially in the form of the access easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-3**, whereby the School, its successors-in-title and its employees, agents and invitees are granted a non-exclusive access easement, across the Cooley Access Easement Property, appurtenant to the School Overpass Property, for the purpose of access to the Overpass Structure from the Cooley Right of Way. The School shall also execute the form of Temporary Construction Access and Equipment and Materials Storage License in the form of **Exhibit D-4** attached to and incorporated by reference in this Agreement, for the purposes of granting to the Park a license to use a portion of the School's property for construction of the Project. None of the easements or licenses described in this Paragraph 6.2.4 shall impinge on or affect the School's parking lot behind Monroe Middle School or the School's driveway in front of Monroe Middle School; provided that the Temporary Construction Access and Equipment and Materials Storage License shall temporarily affect such driveway, as therein described.

- 6.2.5 The School acknowledges that the Park has previously entered into an intergovernmental agreement with the Forest Preserve of DuPage County ("Forest Preserve") for funding of land acquisition as provided by the Forest Preserve. Pursuant to the terms of the intergovernmental agreement, the School will comply with the Forest Preserve's planning review rights within the Lincoln Marsh areas.
- 6.2.6 The School shall provide the Project engineer and other Project consultants and the Administrative Party with such access to School owned properties as may be necessary to perform Project engineering and design work and shall promptly upon request provide the Project engineer and other Project consultants with such surveys, reports and other information in the School's possession or under its control as may be relevant to the Project.
- 6.2.7 The School shall carry out its other obligations as provided in this Agreement.

6.2.8 The School will advise its students and their parents of the existence and safe and proper use of the Overpass Structure. In addition, when misbehavior on the Overpass Structure by any student is reported to the School, the School shall discipline such misbehaving student in accordance with its usual procedures concerning misbehavior occurring to or from school.

6.3 The Parties shall comply with the laws, rules, regulations and requirements of all federal, state, county, municipal and other applicable governmental authorities, now in effect, or which may hereafter be in effect, that are applicable to the construction, maintenance and operation of the Project and to the performance of this Agreement, with the most stringent standards governing.

7. LIABILITIES/INDEMNIFICATION/INSURANCE

7.1 It is acknowledged by the Parties that the Non-Party Contributors have neither exercised nor assumed and will not be required to exercise or assume any jurisdiction, direction or responsibility for the Project, its design, construction, maintenance, operation or any other aspect thereof, other than to contribute funds and/or perform such other functions or take such other actions as specifically agreed by such Non-Party Contributor in a separate written instrument. Accordingly, in the event a lawsuit or administrative proceeding is brought against any one or more of the Parties in connection with the Project, and a Non-Party Contributor is joined in such lawsuit or proceeding for any reason other than its failure to perform its obligations under any such separate instrument to which it is a party, the Parties shall cooperate with the Non-Contributing Party in seeking its dismissal from such lawsuit or proceeding and use their reasonable best efforts to recover any financial damage incurred by the Non-Party Contributor from the party or parties or their attorneys wrongfully joining said Non-Party Contributor to the lawsuit or proceedings.

7.2 It is acknowledged by the Parties that the Administrative Party does not assume any liability by virtue of its acting as the Administrative Party. The other Parties shall indemnify, hold harmless and defend the Administrative Party, the members of its governing board, its officers, employees and agents, against and from any all such liability except to the extent such liability is determined by a court of competent jurisdiction to result from the Administrative Party's gross negligence or willful misconduct in the performance of its duties as the Administrative Party in accordance with this Agreement.

7.3 Except as otherwise provided below, the Parties shall share equally any and all liabilities, costs and expenses incurred, including without limitation fees of the attorneys retained by the Administrative Party in connection with any and all claims, demands and causes of action for injury to or death of any person, or any loss of or damage to property, arising out of, related directly or indirectly to, or in connection with the initial construction of the Project or the maintenance, repair, reconstruction and operation of the Project. Each Party shall be jointly and equally responsible (that is, each Party shall be

fifty percent (50%) responsible) for the payment of any and all liabilities, costs and expenses incurred in connection with any and all claims, demands and causes of action for injury to or death of any person, or any loss of or damage to property, arising out of, related directly or indirectly to, or in connection with a) the construction, maintenance, repair, reconstruction and operation of any portion of the Project (excluding the fencing north of the Railroad right of way), subject to the Park's indemnification obligations described in Exhibit D-4 attached hereto, and b) the indemnification by Park and School of the Railroad under the terms of the Railroad Agreement; provided, however, that each Party shall continue to be solely responsible for the payment of any and all liabilities, costs and expenses incurred in connection with any and all claims, demands and causes of action for injury to or death of any person, or any loss of or damage to property arising out of any condition on real property owned by either Party which does not arise out of, or relate directly or indirectly to, the maintenance, repair, reconstruction or operation of any portion of the Project. Each Party shall be solely responsible for the payment of any and all liabilities, costs and expenses (other than the Shared Costs) incurred in connection with claims made against such Party other than for personal injury or property damage as provided herein, such as claims disputing a Party's authority to participate in or to expend funds in connection with the Project, and the other Parties shall have no liability therefor by way of contribution or otherwise.

7.4 The Park shall indemnify, hold harmless, and defend each other Party, the members of its governing board, and its officers, employees, and agents from and against all liabilities, claims, demands, causes of action, costs and expenses (including without limitation legal fees and costs, i.e. reasonable attorneys' and paralegal fees and costs and court costs) arising out of or related to any injury to or death of any person or any loss of or damage to property resulting from the Park's performance of its obligations under this Agreement, or arising out of, related to or resulting from Park's breach of its obligations under this Agreement. The Park shall not be obligated or responsible to indemnify, hold harmless or defend any other Party or any third party from or against any liability, claims, demands, and causes of action arising out of or related to any injury to or death of any person, or loss of or damage to property, to the extent same result from or arise out of the negligent or wrongful acts or omissions of such other Party or third party or its agents or employees.

7.5 The School shall indemnify, hold harmless, and defend each other Party, the members of its governing board, and its officers, employees, and agents from and against all liabilities, claims, damages, causes of action, costs and expenses (including without limitation legal fees and costs, i.e. reasonable attorneys' and paralegal fees and costs and court costs) arising out of or related to any injury to or death of any person or any loss of or damage to property resulting from the School's performance of its obligations under this Agreement, or arising out of, related to or resulting from School's breach of its obligations under this Agreement. The School shall not be obligated or responsible to indemnify, hold harmless or defend any other Party or any third party from or against any liability, claims, demands, and

causes of action arising out of or related to any injury to or death of any person, or loss of or damage to property, to the extent same result from or arise out of the negligent or wrongful acts or omissions of such other Party or third party or its agents or employees.

7.6 Each Party shall maintain, at its own expense, the insurance coverages described in **Exhibit E-1** attached to and incorporated by reference in this Agreement, subject to such other or additional requirements as may be agreed between the Parties depending on the final terms of the Railroad Agreement or as may be required by the Railroad thereunder, or such other coverages as agreed to by the Parties in writing, insuring the members of its governing board, and its officers, employees and agents, and with respect to the Project, except for worker's compensation coverage, naming the other Parties, the members of their governing boards and their officers, employees and agents as additional insureds. The insurance policies shall incorporate a provision requiring the giving of written notice to the other Parties at least thirty (30) days prior to the cancellation, nonrenewal, or reduction in limits of liability by endorsement, change in deductible per claim, or change in limits or exclusion of any such policies.

7.7 Every contractor retained by the Parties or a Party to perform construction or maintenance on the Project shall be required before commencing work to provide and maintain at his/its sole cost and expense commercial general liability insurance with coverages and policy provisions as described in **Exhibits E-2-A** and **E-2-B** attached to and incorporated by reference in this Agreement, or such other coverages as agreed to by the Parties in writing.

7.8 If the Parties utilize an engineer or other design consultant to perform inspection or design services on the Project, the engineer or consultant shall, prior to commencing its services, be required to provide and maintain at his/its sole cost and expense, commercial general liability and professional (errors and omissions) liability insurance with coverages and policy provisions as described in **Exhibit E-3** attached to and incorporated by reference in this Agreement, or such other coverages agreed to by the Parties in writing.

7.9 If and as required by the Railroad, during the entire period of construction, major repair, reconstruction or replacement of the Overpass Structure, the Parties shall obtain on behalf of their contractors, or shall require their contractors and subcontractors to so provide and maintain, insurance for the benefit of the Railroad as describe in **Exhibit E-4** attached to and incorporated by reference in this Agreement or such other coverages as required by the Railroad.

7.10 The Parties shall provide such other and additional insurance coverages as they shall mutually agree in writing, the Parties acknowledging that with the passage of time required insurance amounts or coverage may increase or change. Allocation of responsibility for payment of the cost of such coverages shall also be as agreed by the Parties in writing.

7.11 The indemnification and other obligations of the Parties contained in this Agreement are not intended to constitute a waiver and shall not constitute a waiver of any immunities or defenses which the Parties have under the statutes of the State of Illinois or at common law.

8. DEFAULT

8.1 A Party shall be deemed to be in default under this Agreement if such Party shall have failed to perform any of its obligations under this Agreement and shall have failed to cure such breach within ten (10) days after notice of such breach shall have been given to such defaulting Party or, if due to the nature of the breach such breach cannot be completely cured with said ten (10) day period, such defaulting Party does not commence to cure such breach within said ten (10) day period and diligently and uninterruptedly pursue such cure to completion.

8.2 In the event of a default by a Party the other non-defaulting Parties shall have the right at their sole discretion, to:

8.2.1 Take such action as is necessary to cure the default themselves, in which event the defaulting Party shall pay to each non-defaulting Party immediately upon demand the amount of money expended by such non-defaulting Party to effect such cure, plus interest at the rate then imposed by the Local Government Prompt Payment Act of the State of Illinois ; or

8.2.2 Bring an action for and obtain specific performance by the defaulting Party of the obligation, in which event the defaulting Party shall not raise or plead as a defense in such action the argument that the non-defaulting Parties have an adequate remedy at law for recovery of damages resulting from such breach.

9. TERM, TERMINATION, EXTENSION AND DISTRIBUTION OF UNUSED FUNDS

9.1 Unless sooner terminated or extended as hereinafter provided, the term of this Agreement shall be for a period of twenty-five (25) years commencing on the date of this Agreement and expiring on the twenty-fifth anniversary thereof (the "Original Term").

9.2 This Agreement may be terminated prior to the expiration of the Original Term as follows:

9.2.1 Upon the written agreement of all of the Parties to terminate the Agreement.

9.2.2 Upon termination in accordance with Paragraph 4.3 or 4.4 of this Agreement, above.

9.2.3 Pursuant to a final, non-appealable court order.

9.3 This Agreement may be extended by and in accordance with the written agreement of the Parties.

9.4 Upon the termination of this Agreement prior to commencement of construction of the Project, whether pursuant to Paragraph 4.3 or 4.4 of this Agreement or otherwise:

9.4.1 The Administrative Party shall take such actions as it deems necessary or expedient to satisfy and pay, from the fund established pursuant to Paragraph 5.3 of this Agreement, all obligations and liabilities related to the funding of the Project, including but not limited to consulting, professional, engineering, and (if allowed by law) legal fees.

9.4.2 Each Party at the time of such termination shall:

9.4.2.1 share equally with all the other Parties in all of the costs and expenses of terminating the Agreement including without limitation the payment and satisfaction of all expenses, costs and liabilities incurred prior to the date of termination associated with applying for funding for the Project and with the administration by the Administrative Party of this Agreement and the Project; and

9.4.2.2 remain liable for and obligated to satisfy and/or perform all of its liabilities and obligations under this Agreement accruing prior to the date of termination.

9.4.3 The Administrative Party shall pay the balance of the monies remaining in the fund established pursuant to Paragraph 5.3 of this Agreement, if any, to the Parties and Non-Party Contributors who have paid contributions for the Project prior to the date of termination of this Agreement, pro rata in accordance with the ratio that each Party's or Non Party Contributor's paid contribution bears to the total of all such paid contributions.

9.5. If, after total completion of the construction of the Project, there are any monies remaining in the fund established pursuant to Paragraph 5.3 of this Agreement, the Administrative Party shall disburse such monies to the Parties and Non-Party Contributors in accordance with **Schedule 6** attached hereto and made a part hereof.

9.6 Upon the termination or expiration of this Agreement after construction of the Project has been completed:

9.6.1 The Administrative Party shall take such actions as it deems necessary or expedient to satisfy and pay, from the fund established pursuant to Paragraph 5.3 of this Agreement, all obligations and liabilities related to the funding of the Project, including but not limited to consulting, professional, engineering, and (if allowed by law) legal fees and relating to the construction, maintenance, repair and reconstruction of the Project prior to the date of termination or expiration of this Agreement.

9.6.2 Each Party at the time of such termination or expiration shall:

9.6.2.1 share equally with all the other Parties in all of the costs and expenses of terminating the Agreement including without limitation(a) the cost of removal of the Project if none of the Parties or any third party agrees to assume the continued maintenance of the Project and associated obligations thereof the

Project, (b) the payment and satisfaction of all other expenses, costs and liabilities incurred prior to the date of termination associated with the administration by the Administrative Party of this Agreement and the Project and the maintenance, repair and reconstruction of the Project; and

9.6.2.2 remain liable for and obligated to satisfy and/or perform all of its liabilities and obligations under this Agreement accruing prior to the date of termination. or expiration

9.6.3 The Administrative Party shall disburse to the Parties and Non-Party Contributors any remaining monies in the fund established pursuant to Paragraph 5.3 hereto in accordance with **Schedule 6** attached hereto and made a part hereof.

Notwithstanding anything contained in this Paragraph 9 to the contrary, if this Agreement is terminated pursuant to Paragraph 4.3 or 4.4 of this Agreement, above, each Party shall only be responsible for payment of a maximum amount of \$191,806.75, subject to such additional payments as may be agreed as described in Paragraph 4.5 of this Agreement..

10. ADDITIONAL TERMS OF THE AGREEMENT

10.1 Subject to Paragraph 10.2, below, if any Party wishes to relinquish and convey its ownership or other interest in the Project or the Park Overpass Property or School Overpass Property, or any other property on which any portion of the Project is located, to a third party, and the third party wishes to assume such interest, the third party receiving such interest shall agree to assume the responsibilities under this Agreement of the Party conveying such interest with respect to the property so conveyed, only, and such conveyance shall be subject to the approval of the other Parties, which approval shall not be unreasonably withheld. In determining whether such approval should be granted or withheld it shall be reasonable for the other Parties to consider among other things, whether or not the proposed third party transferee is and will be financially capable of carrying out and is otherwise likely to carry out the assumed responsibilities of the transferor Party under this Agreement. If the other Parties withhold their approval, the transferor Party may still convey such interest if the transferor Party agrees, in a writing delivered to the other Parties, to retain and be responsible for all of its obligations under this Agreement.

10.2 If any Party wishes to relinquish and convey to a third party its ownership interest in the Project, only, or its interest in the Project as part of a sale or conveyance of any other property on which any portion of the Project is located, the other Parties shall have the right of first refusal to purchase the conveying Party's interest in the Project for the sum of Ten Dollars (\$10.00) as follows: the Party seeking to convey its interest shall notify the other Parties of that fact and shall give the other Parties thirty (30) days within which to notify the conveying Party of the exercise of their right of first refusal, which notification must be accompanied by a check payable to the conveying Party in the amount of Ten

Dollars (\$10.00). In the event of such conveyance the rights and obligations of the conveying Party with respect to the Project under this Agreement shall cease as of the effective date of such conveyance. In the event the other Parties do not exercise their right of first refusal as provided in this Paragraph 10.2, the conveying Party shall have the right to convey its interest in the Project to a third party subject to and in accordance with Paragraph 10.1, above.

10.3 This Agreement shall be approved by resolution or ordinance and executed for and on behalf of each of the Parties by a duly authorized officer thereof.

10.4 Certified copies of said resolutions or ordinances shall be attached hereto and made a part hereof as evidence of the authority exercised by the undersigned officers of the Parties.

10.5 This Agreement shall become effective upon the date it is fully executed by all of the Parties.

10.6 The period of this Agreement may be shortened or extended by written agreement of the Parties.

10.7 This Agreement may be amended or modified only by written instrument, dated subsequent to the date hereof, signed by all of the Original Parties and duly authorized by their respective governing Boards.

10.8 A memorandum of this Agreement may be prepared and recorded by any Party, at such Party's cost and expense, provided the other Parties review and approve said memorandum prior to its recording.

11. ENTIRE AGREEMENT

11.1 This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior negotiations, representations or agreements, either written or oral.

11.2 The Parties acknowledge that subsequent agreements or modifications to existing agreements may be necessary to set forth the functional details of the Project, and agree to cooperate in taking all actions necessary or desirable to carry out the intent and purposes and effectuate the provisions of this Agreement, so long as such subsequent agreements or modifications to existing agreements do not conflict with any rule of, or jeopardize any funding to be received from, any agency granting funds with respect to the Project.

12. NOTICES

Any notice required by the provisions of this Agreement shall be mailed to:

Wheaton Park District
666 South Main Street
Wheaton, Illinois 60187
Attn: Director

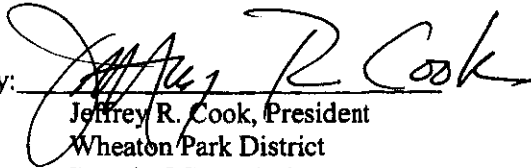
Community Unit School District 200
130 West Park Avenue
Wheaton, Illinois 60187
Attn: Superintendent


13. GOVERNING LAWS

This Agreement shall be governed by the laws of the State of Illinois as to interpretation and performance.

IN WITNESS WHEREOF, the Parties set their hands and seals as of the date indicated below.


WHEATON PARK DISTRICT

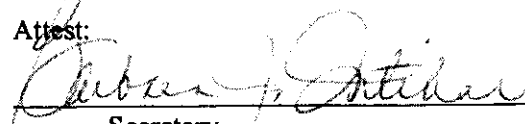
By: 
Jeffrey R. Cook, President
Wheaton Park District
Board of Commissioners

Attest: 
Secretary

Date: 7/20/05

BOARD OF EDUCATION OF COMMUNITY
UNIT SCHOOL DISTRICT 200

By: 
Andrew Johnson, President
Board of Education of
Community Unit School District 200

Attest: 
Secretary

Date: 7/13/05

INDEX TO EXHIBITS AND SCHEDULES

<u>EXHIBIT/SCHEDULE</u>	<u>DESCRIPTION</u>
1.....	Phase I Cost Sharing Agreement
2.....	Phase I and Phase II Shares Paid
3.....	Phase III Shares Committed
4.....	Calculation of Maximum Amount to be Contributed by Parties
5.....	Complete Explanation of Funding of Project – All Sources
6.....	Calculation of Amounts to be Returned to Parties and Non-Party Contributors
A.....	Project Description
B-1.....	Project Map
B-2.....	Project Site Plan
C-1.....	Legal Description of Park Overpass Property
C-2.....	Legal Description of School Overpass Property
D-1	Reciprocal Easement Agreement
D-2.....	Form of Quit Claim Deed for Manchester Access Parcel
D-3.....	Cooley Access Easement Agreement
D-4... ..	Temporary Construction Access and Equipment and Materials Storage License
E-1	Insurance to be Maintained by the Parties
E-2-A.....	Insurance to be Maintained by Contractors During Major Work
E-2-B	Insurance to be Maintained by Contractors During Routine Work
E-3.....	Insurance to be Maintained by Engineers, Architects
E-4.....	Insurance Required by Railroad of Contractors and Sub-contractors
E-5.....	Form of Construction Easement Agreement

SCHEDULE 1 – PHASE I COST SHARING AGREEMENT

SEE ATTACHED

September 12, 1995

Dr. James Travis, Community Unit School District 200
Mr. Gary King, DuPage County
Ms. Betty Gloyd, Metra
Mr. Don Rose, City of Wheaton
Mr. Herb Wehling, Milton Township Supervisor
Mr. Wilbert Hageman, DuPage County Fair Association

Subject: Wheaton C&NW Pedestrian Overpass & Connecting Trails Federal Aid
Enhancement Project - Wheaton Park District

Dear Local Agency Sponsor:

We now have final commitment from the Wheaton Park District, Community Unit School District 200, DuPage County, Metra, City of Wheaton, Milton Township and DuPage Fair Association (collectively LOCAL AGENCIES) to fund the local match cost for the Pedestrian Overpass Project near Monroe School in the City of Wheaton (the PROJECT). In addition, the Illinois Department of Transportation (IDOT) has approved the Phase I Engineering Scope of Work as submitted by CEMCON, Ltd. (ENGINEER) to the Wheaton Park District (WPD).

The development of an Intergovernmental Agreement for Pedestrian Overpass Ownership & Maintenance involving the WPD, Community Unit School District 200 and Milton Township is still in progress; however, the Illinois Department of Transportation (IDOT) has indicated that we can proceed with the execution of the Engineering Agreement with the ENGINEER so that we can continue to move ahead with the project.

The WPD, as lead local agency, is the only local signatory to the engineering agreement with IDOT. As such, the WPD will be responsible for payment of 100 percent of the invoices submitted by the ENGINEER as Phase I Engineering work is completed. The WPD will in turn seek reimbursement from IDOT for the Federal (80 percent) share of cost and from the LOCAL AGENCIES based on their proportionate share of the remaining Local Match (20 percent) cost (FAIR SHARE), as determined by the ratio of funds each has pledged to the total commitment of all LOCAL AGENCIES as shown in Table 1, on the following page.

Table 1

**C&NW PEDESTRIAN OVERPASS PH I ENGINEERING
FAIR SHARE LOCAL MATCH ALLOCATION**

AGENCY	LOCAL AGENCY TOTAL PROJECT FUNDING COMMITMENT	FAIR SHARE PH I ENGINEERING LOCAL MATCH ALLOCATION	ANTICIPATED MAX. LOCAL FAIR SHARE OF PH I ENGINEERING (1)
Wheaton Park District	\$50,000	29.33%	\$3519.60
School District 200	\$50,000	29.33%	\$3519.60
DuPage County	\$25,000	14.66%	\$1759.20
Metra/C&NW	\$15,000	8.80%	\$1056.00
City of Wheaton	\$13,000	7.62%	\$ 914.40
Milton Township	\$12,000	7.03%	\$ 843.60
DuPage Fair Association	\$ 5,500	3.23%	\$ 387.60
TOTAL:	\$170,500	100%	\$12,000.00

Based on IDOT Approved Phase I Engineering Cost of \$60,000 and a 20 percent local match,
for a total local agency cost of \$12,000.

The LOCAL AGENCIES agree to reimburse the WPD for their FAIR SHARE of total Phase I Engineering costs incurred by the WPD within thirty (30) days of receipt of invoice from the WPD. The original ENGINEER'S invoice(s) will be submitted with the request for payment.

This Agreement contains the entire and only agreement between the LOCAL AGENCIES respecting FAIR SHARE allocation of Phase I Engineering costs for the PROJECT; any representation, promise or condition, written or verbal, not incorporated herein shall not be binding on any of the parties. Furthermore, nothing in this Agreement binds any party to subsequent engineering or construction phases or the on-going ownership, maintenance, operation or liability of the PROJECT.

An executed copy of this Agreement will serve as your acceptance of the terms and conditions herein. Please sign and return this Agreement, and we will return a copy of the executed Agreement to you.

Sincerely,

Robert Dunsmuir
Director/Secretary
Wheaton Park District

Accepted this 12th day of
SEPTEMBER, 1995.
Wheaton Park District

By: [Signature]

Accepted this 14th day of
SEPTEMBER, 1995.
DuPage County

By: Lyle M. Franzen

Accepted this 13th day of
SEPTEMBER, 1995.
City of Wheaton

By: Donald Rose

Accepted this 3rd day of
OCTOBER, 1995.
DuPage Fair Association

By: Wilhelm F. Hagen

Accepted this 13th day of
SEPTEMBER, 1995.
Community Unit School District 200

By: [Signature]

Accepted this 22nd day of
SEPTEMBER, 1995.
Metra

By: [Signature]

Accepted this 15 day of
SEPTEMBER, 1995.
Milton Township

By: [Signature]

SCHEDULE 2 - PHASE I AND PHASE II SHARES PAID

<u>Agency</u>	<u>Phase I Share Paid</u>	<u>Phase II Share Paid</u>
Wheaton Park District	\$3,519.60	\$46,480.40
Board of Education of Community School District 200	\$3,519.60	\$46,480.40
DuPage County	\$1,759.20	\$23,240.80
City of Wheaton	\$914.40	\$12,085.60
Milton Township	\$843.60	\$11,156.40
DuPage County Fair Association	\$387.60	\$00.00*
Union Pacific Railroad	<u>\$00.00</u>	<u>\$00.00**</u>
TOTALS	\$10,944.00	\$139,442.80

*No further payments expected from DuPage County Fair Association

**Letter from Union Pacific Railroad dated December 29, 1994 stated original contribution of \$15,000; letter from Union Pacific Railroad dated December 7, 2004 stated additional contribution of \$26,400 (see Schedule 3), but indicated all contributions would not be paid until construction of Project completed.

SCHEDULE 3 – PHASE III SHARES COMMITTED

<u>Agency</u>	<u>Phase III Share</u>
Wheaton Park District	\$90,000
Community School District 200	\$90,000
City of Wheaton	\$37,000
Union Pacific Railroad	\$26,400
DuPage County	<u>\$90,000</u>
TOTAL	\$333,400

**SCHEDULE 4 – CALCULATION OF MAXIMUM AMOUNT
TO BE CONTRIBUTED BY PARTIES**

Estimated total cost of Project as of 2003		\$2,350,000.00
Phase I Shares and Phase II Shares Paid (See Schedule 2)	\$150,386.50	
Plus Railroad commitment for Phase I and II (See Schedule 2)	\$15,000.00	
Federal Highway Administration Funds TEA-21	\$1,881,000.00	
Illinois Dept. of Natural Resources Bikeways Grant	\$200,000.00	
TOTAL FUNDS PAID OR COMMITTED AS OF 2003	\$2,246,386.50	<u>(\$2,246,386.50)</u>
Parties agreed funding shortfall as of 2003		\$103,613.50

Maximum contribution by Parties:

Wheaton Park District Phase I and Phase II Shares Paid (See Schedule 2)	\$50,000.00
Wheaton Park District Phase III Share committed (See Schedule 3)	\$90,000.00
Wheaton Park District ½ of agreed funding shortfall as of 2003 (See above)	<u>\$51,806.75</u>
Wheaton Park District Maximum Contribution	\$191,806.75
CUSD 200 Phase I and Phase II Shares Paid (See Schedule 2)	\$50,000.00
CUSD 200 Phase III Share committed (See Schedule 3)	\$90,000.00
CUSD 200 ½ of agreed funding shortfall as of 2003 (See above)	<u>\$51,806.60</u>
CUSD 200 Maximum Contribution	\$191,806.75

SCHEDULE 5
COMPLETE EXPLANATION OF FUNDING OF PROJECT, ALL SOURCES

Elements of cost:

Construction	\$2,540,000.00
Phase I Type Size Loc.	\$50,326.00 (Paid)
Supp. Soil Borings	\$11,138.00 (Paid)
Phase II Design	\$183,126.00 (Paid)
Supp. Soil Borings	\$13,421.00 (Paid)
Construction Supervision	<u>\$90,000.00</u>

Total Estimated cost of the project as of July, 2004

\$2,888,311

Initial contributions already paid or committed by local government and other agencies:

Wheaton Park District	\$50,000 (paid)
Community Unit School District 200	\$50,000 (paid)
DuPage County	\$25,000 (paid)
Union Pacific Railroad, formerly the Chicago and Northwestern Railroad	\$15,000 (committed)
City of Wheaton	\$13,000 (paid)
Milton Township	\$12,000 (paid)
DuPage County Fair Association	<u>\$388 (paid)</u>

TOTAL	\$165,388	\$165,388
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Federal Highway Administration Funds TEA-21	\$1,881,000
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Illinois Department of Natural Resources Bikeway Grant	\$200,000
--	------------------

Wheaton Park District/Community Unit School District 200, per Intergovernmental Agreement (up to)	\$103,612
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TOTAL 2002 COMMITTED FUNDS	\$2,350,000.00	\$2,350,000.00
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Committed additional contributions from local government and other agencies since September, 2004, as of March 23, 2005:

Wheaton Park District	\$90,000
Community Unit School District 200	\$90,000
City of Wheaton	\$37,000

Union Pacific Railroad	\$26,400		
DuPage County	<u>\$90,000</u>		
TOTAL	\$333,400	\$333,400	
Illinois Commerce Commission Grade Crossing Protection Fund Grant		<u>\$240,000</u>	
TOTAL FUNDING ALL SOURCES		\$2,923,400	<u>(\$2,923,400)</u>
POSSIBLE SURPLUS			\$35,089

SCHEDULE 6
CALCULATIONS OF MONIES TO BE RETURNED TO PARTIES AND NON-PARTY
CONTRIBUTORS IF MONIES REMAIN AFTER CONSTRUCTION OF PROJECT OR IF
AGREEMENT IS TERMINATED AFTER CONSTRUCTION OF PROJECT HAS BEEN
COMPLETED, ASSUMING PRIOR PAYMENT IN FULL BY ALL PARTIES AND NON-
PARTY CONTRIBUTORS

If the total monies remaining are under \$159,000, then to:

Wheaton Park District	33 1/3%
Community Unit School Dist. 200	33 1/3%
DuPage County	33 1/3%

If the total monies remaining are over \$159,000, then:

Of the first \$159,000, to:

Wheaton Park District	33 1/3%
Community Unit School Dist. 200	33 1/3%
DuPage County	33 1/3%

Of the next \$103,612, up to \$262,612, to:

Wheaton Park District	50%
Community Unit School Dist.200	50%

Of monies over \$262,612 , create a percentage based on the following fraction, and each receives the applicable percentage:

Wheaton Park District	\$37,000	numerator
Community Unit School Dist. 200	\$37,000	numerator
DuPage County	\$37,000	numerator
City of Wheaton	\$37,000	numerator
Union Pacific Railroad Company	\$41,400	numerator
Non-Party Contributor A	\$X	numerator
Non-Party Contributor B	\$Y	numerator
Non-Party Contributor C	\$Z	numerator

TOTAL

Denominator

For example, if Non-Party Contributors A, B and C were Milton Township, the Village of Winfield and the DuPage County Fair Association and each contributed \$10,000, then the Denominator is \$219,400. Assume the total monies remaining are \$275,000 . Community Unit School Dist. 200 would receive \$52,947 [33 1/3% of \$159,000] plus \$51,806 [50% of \$103,612] plus \$2,088.62 [\$37,000 divided by \$219,400 = 16.86% times \$12,388 (\$275,000 minus \$262,612) = \$2,088.62].

EXHIBIT A

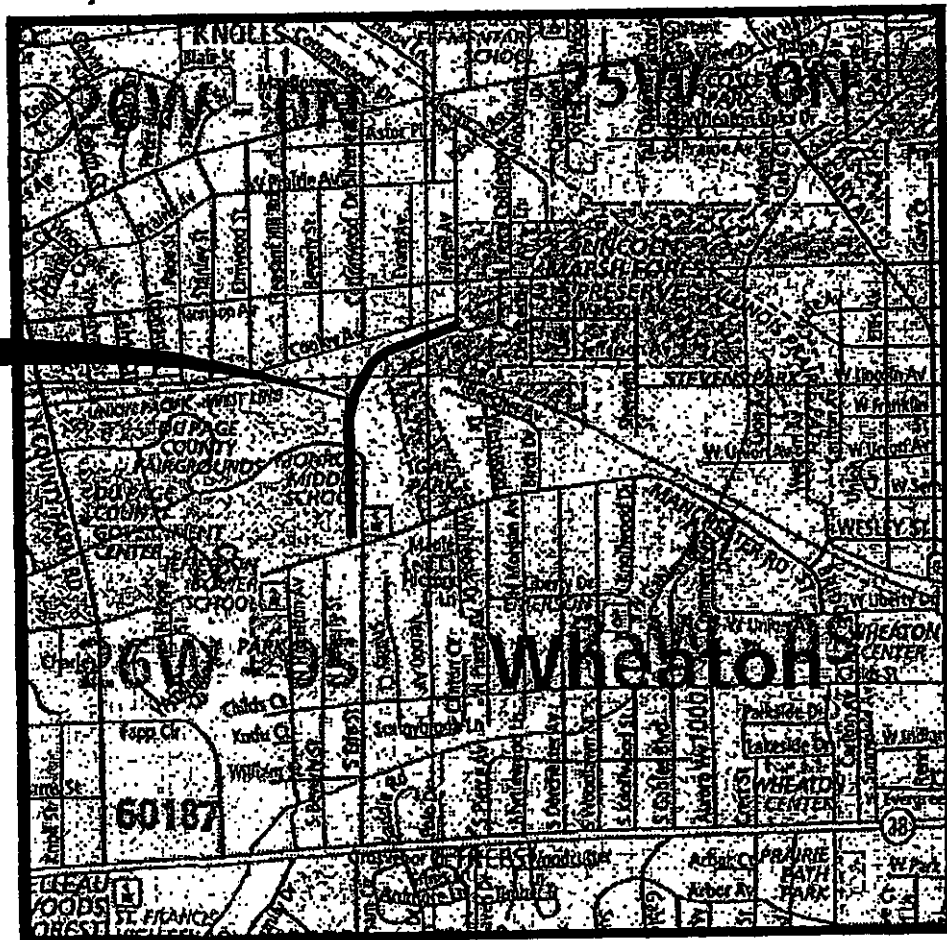
DETAILED DESCRIPTION OF PROJECT

The Project is to construct an accessible overpass and trail linkages from the Illinois Prairie Path southwest through the Lincoln Marsh, Winfeld Creek Greenway, via the Cooley Ave. right of way, over the Union Pacific Railroad to Manchester Road, at a point adjacent to the DuPage County Fairgrounds and Monroe Middle School, linking these facilities to the entire DuPage County Government Center, senior housing development, Jefferson Elementary School, and Retail/Office Research Center. The proposed scope of work includes engineering design, construction of approach paths , construction of abutments, piers and other substructure elements, construction of drainage ditches, construction of access control fencing, lighting, pavement markings and signing as required. The Project corridor begins on the property of the Monroe Middle School, situated immediately east of the DuPage County Fairgrounds, on Manchester Road, one mile east of County Farm Road, in northwest Wheaton, in DuPage County, extends north across the 100-foot wide Union Pacific Railroad right-of-way, to a parcel owned by the Wheaton Park District, and continues approximately 100 feet to the Cooley Avenue right-of-way, within which the Illinois Prairie Path is located, a length of approximately one mile.

EXHIBIT B-1
PROJECT MAP
SEE ATTACHED

GE COUNTY, ILI STRIAN/BIKE PAT ON PACIFIC RAIL

PROJECT
LOCATION



LOCATION MAP